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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/834,838 | 04/13/2001 | Michael James Burk | 41556/04005/ (RS11P099) | 7593 |
| 22428 | 7590 | 10/08/2004 | EXAMINER | |
| FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007 | | | ZEENDER, FLORIAN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3627 | |

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,838

Applicant(s)

BURK, MICHAEL JAMES

Examiner

F. Ryan Zeender

Art Unit

3627

My

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/3/03, 2/3/03, 9/7/01, 10/23/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 and all claims dependent therefrom recite limitations comprising only logic. Since "logic" does not comprise any physical element, the use of the terminology, "A system" appears to be misdescriptive.

Claim Rejections - 35 USC §101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20, as best understood, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to

promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-6, 8-14, and 16 only recite an abstract idea. The recited steps/logic of merely identifying a global forecast, transmitting the forecast, receiving feedback, altering the forecast, and managing a supply chain do not necessarily apply, involve, use, or advance the technological arts since all of the recited steps/logic can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of collaborative forecasting.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, claims 1-16 do **not** appear to produce a tangible result. Further, claims 17-20 recite computer code that is not depicted to be on a computer readable medium.

Therefore, because the recited process/system/program does not produce a useful, concrete, and tangible result and the process/system of claims 1-6, 8-14, and 16 is not within the technological arts as explained above, claims 1-20 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

Claims 1-5, 7, 9-13, 15, and 17-19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lidow (US2002/0019761A1).

Lidow lacks the specific teaching of storing the global forecast and the feedback in the memory of the supply chain server.

Re claims 2, 3, 5, 10, 11, 13, and 18: the limitations are design choices that would have been obvious to one of ordinary skill in the art at the time of the invention to produce a desired result/outcome.

Claims 6, 8, 14, 16, and 20, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lidow (US2002/0019761A1), as applied to claims 1 and 9 above, and further in view of Garg '407.

Lidow disclose, inherently teach, or make obvious all of the limitations of the claims, as mentioned above, but lacks the specific teaching of the global forecast being in response to a promotion.

Garg teaches that it is well known in operational management to provide forecasts responsive to promotions (See for example Col. 1, line 65 through Col. 2, line 3; and Col. 1, lines 1-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lidow to have the global forecast be in response to a promotion, in view of Garg, in order to accurately determine demand for a product due to its promotion.

Re claims 8, 16, and 20: The limitation would have been an obvious design choice to one of ordinary skill in the art at the time of the invention in order to allow those outlets/suppliers with the capability to increase output to produce more goods (due to the promotional affects) and thus increase their revenues.

Relevant Prior Art

The assignee, Restaurant Services Inc. (RSI), launched a product (RSI/Link) "to collect sales, shipment, pricing, and inventory information from Burger King's 350 suppliers and distributors" (See "A Whopping Inventory Task") in 1994.

The article "Burger King Orders AT&T Mail Service" discusses how "the E-mail network will replace a manual, paper-based tracking and ordering system."

The Examiner requests that the applicant provide the Office with any known information relevant to the above mentioned product launch.

The additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on (703) 308-5183. The receptionist's phone number for the Technology center is (703) 308-1113.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326 for before-final communications.

F. Zeender
Primary Examiner, A.U. 3627
October 1, 2004


F. RYAN ZEENDER
PRIMARY EXAMINER
10/1/04